House Public Health Committee:
The Honorable Senfronia Thompson, Chair
The Honorable John Wray, Vice Chair
The Honorable Steve Allison
The Honorable Garnet Coleman
The Honorable James B. Frank
The Honorable R.D. Guerra
The Honorable Eddie Lucio III
The Honorable Evelina Ortega
The Honorable Four Price
The Honorable J.D. Sheffield, MD
The Honorable Bill Zedler

October 16, 2020

Honorable Members of the Texas House Public Health Committee,

On behalf of The Texas Association of Freestanding Emergency Centers (TAFEC), we would like to submit the following information for your committee's INTERIM CHARGE 2.

TAFEC is a member-based association representing more than 100 freestanding emergency centers and an industry which employs nearly five thousand Texans. As you may know, Freestanding Emergency Centers (FECs) are fully equipped emergency departments staffed by board-certified, emergency medicine-trained physicians and registered nurses who are on-site 24 hours a day, seven days a week. These facilities are fully equipped for all medical emergencies, are highly regulated by the state and comply with all state EMTALA requirements, which mandate treatment of all patients regardless of their ability to pay.

FECs have been a valuable resource during this national health crisis in treating Texans as well as helping relieve pressure on overburdened hospitals. Many healthcare facilities first opted not to offer COVID-19 assessments, leaving FECs, hospitals, and government entities as the lone providers willing or able to take the risk. As the demand grew, it was not uncommon to see patients waiting for many of the government and community testing centers' appointments for 7-14 days after exposure or onset of symptoms, which put pressure on FECs for those patients seeking immediate care.

Despite the surge in patients and the costs of treating and testing them, FECs were not eligible to apply for any federal provider relief dollars. TAFEC members at their own expense obtained testing machines, PPE, and supplies at above-market costs to continue to treat both patients with

exposure and mildly symptomatic patients. TAFEC member facilities were also forced to secure supplies outside of their standard supply chain and develop new relationships with outside laboratories to process COVID-19 specimens. To continue to meet patient demand, FECs hired extra staff, worked longer hours and changed their operations and intake processes to keep patients and staff safe.

TAFEC has and will continue to support the appropriate utilization of FECs for access to emergency care. TAFEC supports FECs in complying with their legal obligations to provide every patient with an appropriate medical screening consistent with their symptoms and condition. TAFEC strongly encourages all facilities, including FECs, to disclose to patients and to the public the full scope of their charges for services, including COVID-19 and associated testing.

We welcome the opportunity to answer the Committee's questions.

<u>INTERIM CHARGE 2:</u> Review how Texas is preparing for state and federal budgetary changes that impact the state's health programs, including: the Family First Prevention Services Act; the next phase of the 1115 Healthcare Transformation and Quality Improvement Program Waiver; Texas' Targeted Opioid Response Grant; the Centers for Medicare and Medicaid Services proposed Medicaid Fiscal Accountability Rule, and the Healthy Texas Women Section 1115 Demonstration Waiver.

Allow FECs the ability to offer non-emergent care

Currently, FECs are not permitted to provide non-emergency care such as out-patient services, although they possess all of the resources to do so. Out-patient services they are equipped to provide could include; testing, infection assessment, pharmacy, lab work, radiology, imaging and other vital services, allowing FECs to fill the void in rural communities where critical access to hospitals have closed. Due to its size and vast rural areas, Texas leads the nation in rural hospital closures. Since 2010, 17 of the nation's 100-plus rural hospital closures —which include facilities that have stopped offering short-term, acute inpatient care have occurred in Texas. FECs could fill this void with offering both emergent and non-emergent care. In an effort to lower health care costs for Texan's during this national health crisis, TAFEC sent a letter to The Texas Health and Human Services Commission on July 28, 2020, requesting the ability for its members to allow them to provide non-emergent services and testing. If allowed to offer non-emergent care, our members and FECs in general would be able to lower the cost to the healthcare system of COVID-19 treatment and any other care that might not be related to the pandemic. The need for FECs to provide non-emergent care during this crisis will be even more crucial when a vaccine becomes available. FECs are open 24 hours, which is key in administering the vaccine to help slow the spread of COVID-19. This regulatory request mirrors HB 1278 from the 86th legislative session. Representative James White authored House Bill 1278 which would have allowed freestanding emergency medical care facilities the ability to offer outpatient acute care services. The bill was voted unanimously out of House Public Health Committee but never made it out of Calendars. If

House Bill 1278 had made it into law, it would have allowed state licensed FECs to offer non-emergent care during this pandemic.

Obtaining long-term Medicaid and Medicare recognition for FECs

The state saves Medicaid dollars when patients receive care at an FECs because they are less likely to be admitted to a hospital. FECs provide value to our state's health care system by decreasing the time it takes patients to receive emergency services and reducing admissions rates, since hospitals make up 44% of health care costs within the United States. When comparing FECs to hospital-based ERs, Simon et al observed 20% lower admission rate for conditions such as chest pain, COPD, asthma, and congestive heart failure.

If given the opportunity to obtain long-term Medicaid and Medicare recognition, FECs would be able to alleviate over-crowding in hospitals, provide rural and underserved Texans with more and easier access to care.

Prior to April 21,2020, FECs were not eligible for Medicare or Medicaid reimbursement because they are owned, in whole or in part, by independent groups or individuals, cutting off access for the most vulnerable Texans. Early on in the pandemic, TAFEC worked with Centers for Medicare-Medicaid Services (CMS), the Texas Congressional delegation and other healthcare stakeholders to secure and implement the April 21, 2020 1135 waiver, which created a pathway for FECs to be reimbursed for the care of Medicare beneficiaries. This waiver enabled Texas and the federal government to leverage resources to assist patients and tap an extra 1,550 beds, equivalent to three major hospitals with an infrastructure cost valued at over $1.5 billion.

FECs stepped up during this national health crisis to help their fellow brothers and sisters in a fragile healthcare landscape. Through coordinated efforts with various regional advisory councils and trauma systems, FECs were asked to hold patients for extended periods of time in hopes of avoiding hospital admissions. This process saved lives. Harlingen Vietnam Veteran Edwin Howell told a local news outlet that he credits a freestanding ER for saving his life after a battle with COVID-19. When Mr. Howell first fell ill with the virus, he called for an ambulance, but was stunned to find out the only way he could get help is if his wife drove him to the freestanding ER. The FEC told KRGV they tried transferring Mr. Howell to a hospital, but local hospitals were at capacity. They found themselves in a really unique position of providing more definitive long-term care in order to save lives. Mr. Howell's story is one of many that spotlights the vital and important role freestanding emergency centers are playing within our state.

Utilization of FECs by ERS/TRS Beneficiaries

While ERS/TRS may not directly contract with medical providers, TAFEC recommends that those agencies should advise its Third-Party Administrator (TPA) to contract with FECs with terms that are favorable to the state and their respective agencies. These contract terms should be consistent with reimbursements offered to other Hospital based emergency rooms.

Contract negotiating is a process that requires both parties to communicate and create a dialogue about network status. Unfortunately, the recent history shows that when FECs reach out to these TPAs to discuss network status, there is little or no response from the insurance industry. Or it results in a process that does not reflect market rates for emergency care.

State and Federal laws define emergency care as an essential health benefit. ERS/TRS beneficiaries should have full access to network providers regardless of where they are located. TAFEC members will continue working with ERS/TRS and their TPAs but recommends that the Legislature examine solutions to encourage those agencies to have meaningful contract discussions with interested FECs.

Regional Advisory Councils and EMS

Texas licensed FECs are required by law to integrate into the local EMS systems. However, there is no reciprocal requirement for the EMS system to have FECs in their trauma or disaster plan. That results in some critical emergency patients being transported to another facility and driving past a FEC which is fully equipped to handle that patients' medical needs. TAFEC supports better coordination of care to divert care to the appropriate facilities.

TAFEC recommends that FECs are included in the Hospital Preparedness Program (HPP) overseen by DSHS. This would require that all FECs are working directly with their local RACs on data reporting requirements, disaster preparedness, PPE needs and how best to utilize FECs within the EMS community.

We applaud our state's strong leadership and tremendous work during this time. Thank you for your time and attention to these important matters.

Sincerely,

Brad Shields
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